

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ANGELO POWELL,

Plaintiff,

v.

MARLAIS, et al.,

Defendants.

Case No. [14-cv-05308-JSC](#)

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION
WITHOUT PREJUDICE; GRANTING
LEAVE TO FILE AMENDED
COMPLAINT**

(Dkt. No. 11)

Plaintiff, a California prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. He claims that while at California Training Facility (“CTF”), defendants Dr. Marlais and Dr. Calderon failed to properly treat his abscessed tooth. The complaint was found, when liberally construed, to state a cognizable claim under the Eighth Amendment against Marlais and Calderon, and the United States Marshal was directed to serve them at CTF, where Plaintiff indicated they were located. The Marshal returned the summonses unexecuted, however, because both Defendants have retired and are no longer located at CTF. Plaintiff has recently filed a motion for a preliminary injunction to order Defendants to refer him to an oral surgeon or an outside facility to complete the root canal surgery. As both Defendants have retired from service, they cannot be ordered to refer him for dental care.

Plaintiff has attached to his motion a “proof of service” indicating that he served the motion upon a Dr. Henry Uy, a supervising dentist at CTF. Dr. Uy is not named as a Defendant in the complaint, however. If Plaintiff wishes to obtain a preliminary injunction directing Dr. Uy to refer Plaintiff for dental care, Plaintiff must file an amended complaint naming Dr. Uy as a Defendant and alleging a cognizable claim against him. Plaintiff must also file a separate motion for preliminary injunction against him, and he must provide notice to Dr. Uy of that motion in

1 accordance with Rule 65(a)(1) of the Federal Rules of Civil Procedure. Plaintiff should also send
2 a copy of the motion to the Attorney General of the State of California, who will presumably
3 represent Dr. Uy in this case.

4 Accordingly, Plaintiff is GRANTED leave to file an amended complaint **within 28 days**
5 **of the date this order is filed**, that states a cognizable claim against a prison employee who is
6 currently in a position to provide the preliminary injunctive relief that Plaintiff seeks. The
7 amended complaint **must** include the caption and civil case number used in this order (No. C 14-
8 5308 JSC (PR)) and the words "COURT-ORDERED FIRST AMENDED COMPLAINT" on the
9 first page. Because an amended complaint completely replaces the original complaint, *see Ferdik*
10 *v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff may not incorporate material from the
11 original by reference; he must include in his amended complaint all the claims from the original
12 complaint that he wishes to preserve. If Plaintiff elects to file an amended complaint, any claim or
13 Defendant not included in the amended complaint will no longer be a part of this case. If Plaintiff
14 does not file an amended complaint within this time, this case will proceed only against the two
15 retired prison officials named as Defendants in this action, and a further order will be issued
16 pertaining to the service of these individuals.

17 The motion for a preliminary injunction is DENIED without prejudice.

18 **IT IS SO ORDERED.**

19 Dated: April 20, 2015

20
21 
22 JACQUELINE SCOTT CORLEY
23 United States Magistrate Judge
24
25
26
27
28